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JAMES R. BROWNING, Clerk

No. 151

In the Supreme Court of the United States

OCTOBER TERM, 1961

LOCAL 164, INTERNATIONAL BROTHERHOOD OF PAINTERS, DECORATORS, AND PAPERHANGERS OF AMERICA, AFL-CIO, ET AL., *Petitioners*

v.

NATIONAL LABOR RELATIONS BOARD

On Petition for Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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STATEMENT OF ASSOCIATED PLUMBING, HEATING, AND PIPING CONTRACTORS OF ARIZONA, AMICUS CURIAE

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This memorandum is filed in the name of the Associated Plumbing, Heating and Piping Contractors of Arizona, but at the behest of a number of contractors associations in Arizona, New Mexico, California, Utah, and Washington. The Amicus appreciates the courtesy of the parties in consenting to the filing. We do file to express the view of these employers in the construction industry in the western region, where bonds are being extensively used, that the bond question is of such substantial importance as to warrant review here.

1. The government's memorandum says that the questions of whether unions may insist on bonds in "unique," and presents "no problem of consequence in the administration of the act."

It says further that they do not "relate directly or indirectly to any conditions of employment."

2. We file this statement to note our disagreement. Performance bonds, whether of the surety or cash variety, are invaluable to insure the payment of fringe benefits. The amount specified for welfare, pensions, vacations, industry promotional funds, apprenticeship, or other "fringe" purposes are in any given case likely to be fairly small. Bonds give a ready means of collection.

The position of the Court below and of the government is to force the parties off this handy method of contract enforcement, and either to compel the union to strike or the fringe benefit trust to sue to collect. Either would be a classic case of using a trip hammer to crack a peanut; those classical but overly energetic methods are not suitable for these small claims.

3. This problem is especially serious in the construction industry where the claims are particularly likely to be small. These employers have supported a system either of surety bonds, or of cash bonds, or even of advance payments which have the same practical effect as cash bonds.

These employers support this approach because it insures *streamlined* collection. These are highly organized industries. We cannot afford a system in which fringe benefit payments are enforced as to some and not as to others. Hence such systems are highly desirable, but to insure uniformity, they must be within the scope of mandatory bargaining if they are to survive.

4. We appreciate the implications of the government observation that bargaining is not to be restricted to the "financially responsible." If the Court below or the Board had rested on the proposition that the bond was excessive, or that 8(d) bargaining is restricted to "reasonable" security, we should not complain.

But the position here taken knocks out the most useful device yet discovered for enforcing fringe payments. The bonds in one

form or another are far from "unique," and *do* relate in the most immediate way to conditions of employment. We respectfully submit that the matter is important enough to warrant the consideration of this Court and that certiorari should be granted.

Respectfully submitted,

John P. Frank

September, 1961